FILED
AUG 15 1996
CLERK

No. 95-1478

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JAY PRINTZ, Sheriff/Coroner,
Ravalli County, Montana,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 15, 1996
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49 pp

JOINT APPENDIX
TABLE OF CONTENTS

1. U.S. District Court for the District of Montana, relevant docket entries 1a

2. U.S. Court of Appeals for the Ninth Circuit, relevant docket entries
No. 94-36193 ..... 6a
No. 95-35037 ..... 8a

3. U.S. District Court for the District of Montana, Affidavit and Declaration of Plaintiff Jay Printz, Sheriff/Coroner, filed as Exhibit 2 to memorandum in support of motion for preliminary injunction, March 4, 1994 .. 9a

4. U.S. District Court for the District of Montana, Plaintiff's Exhibits introduced at hearing of April 7, 1994:

Ex. 1: Brady Law Transactions 18a
Ex. 2: Ravalli Co. Sheriff's Dept. Yearly Report, 1992 ..... 19a
Ex. 3: Ravalli Co. Sheriff's Office Annual Report, 1993 ..... 22a

5. U.S. District Court for the District of Montana, Transcript of Proceedings of April 7, 1994 (excerpts: pages 16-20, 23-28, 34-36) 25a

6. U.S. District Court for the District of Montana, Exhibit 5 to Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction: Bureau of Justice Assistance Fact

Sheet, Fiscal Year 1993 Review of State Formula Grant Strategies (excluding Exhibits) 38a

ITEMS ALREADY REPRINTED

Items reproduced in the Appendix to the Petition for a Writ of Certiorari:

Opinion of the U.S. Court of Appeals for the Ninth Circuit 1a

Judgment of the U.S. Court of Appeals for the Ninth Circuit 26a

Order on Petition for Rehearing and Suggestion of Rehearing en Banc issued by the U.S. Court of Appeals for the Ninth Circuit 28a

Opinion and Order of the U.S. District Court for the District of Montana entered May 16, 1994 ... 30a

Judgment of the U.S. District Court for the District of Montana entered May 16, 1994 ..... 67a

Order of the U.S. District Court for the District of Montana entered November 1, 1994 ..... 69a

Order of the U.S. District Court for the District of Montana entered December 16, 1994 .... 73a

Constitutional Provisions and Statutes 75a

U.S. Const., Art. I, §8, cl. 3 ..... 75a

U.S. Const., Amendment X 75a

Brady Handgun Violence Protection Act, Pub.L. 103-159, 107 Stat. 1536 (1993) 76a

Item reproduced in the Appendix to the Brief for the United States in response to the Petition for a Writ of Certiorari:

Open Letter to State and Local Law Enforcement Officials, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (Jan. 21, 1994) 1a

No. 95-1478

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JAY PRINTZ, Sheriff/Coroner,
Ravalli County, Montana,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

1. U.S. District Court for the District of Montana, relevant docket entries

TERMED APPEAL

U.S. District Court
U.S. District Court of Montana (Missoula)

CIVIL DOCKET FOR CASE #: 94-CV-35

Printz v. USA
Assigned to: Judge Charles C. Lovell Filed 3/4/94
Demand: $0.000 Nature of Suit: 890
Lead Docket: None Jurisdiction: US Defendant
Dkt # in USCA - 9th Circuit: is :94-cv-36193
* * *
Cause: 28:2201 Declaratory Judgement

* * *

3/4/94 1 COMPLAINT (kjh)

* * *

3/4/94 3 MOTION by plaintiff for preliminary injunction (kjh)

* * *

3/31/94 23 RESPONSE by defendant USA in opposition to motion for preliminary injunction [3-1] w/c/s (gar)

* * *

4/6/94 26 REPLY by plaintiff to response to motion for preliminary injunction [3-1], motion for temporary restraining order [2-1] file delivered to: Kurt Alme, Law Clerk (dmz)

4/7/94 28 MINUTES: before Judge Charles C. Lovell @ Hlna. C/R: Tina Brilz, Stephen Halbrook & James Haynes pr for plf w/Sheriff Printz. Michael Sitcov pr for dfts. There is a motn to combine this hrg w/trial on the merits of case. Govt not prepared to argue & submit entire issue here. Needs to make phone call before agreeing to this. Argumt to continue. Plf witns S/T for plf: Jay Printz, Allen Horsfall. Plf exh admitted w/o obj.: 1,2,3. Discussion had whether Ravalli County Commissioners would join in lawsuit. Not to become party to the case now. After phone call to Dept of Justice, Sitcov states Dept of Justice would agree to crt handling case on the merits at conclusion of this hrg. Cnsl Halbrook and Sitcov argue case. Matter submitted and under adv, along wi stip of pties to combine this hrg w/trial on merits of case, which is now under adv. (baf) [Entry date 04/13/94] [Edit date 05/20/94]

* * *

5/16/94 33 OPINION, AND ORDER: by Judge Charles C. Lovell granting motions for preliminary injunction [3-1], and temporary restraining order [2-1]. HEREBY ORDERS that judgment shall enter declaring section 922(s) (2) of Title 18, US Code unconstitutional and void, and permanently enjoining US from enforcing said provision. All other provisions of the Act are severable, and are unaffected by this order and the judgment to be hereafter entered. CC: CCL, Judges (6), Haynes, Halbrook, Gallinger, Linder, Mazurek, Goetz, Henigan, cert copy to Clk, Msla. J/O Vol. 48, pg. 3499. (gar) [Entry date 05/17/94] [Edit date 05/20/94]

5/16/94 34 FILED AND ENTERED JUDGMENT: by Judge Charles C. Lovell dismissing case. It is declared, ordered, adjudged, and decreed that 18 USC 922(s) (2) exceeds the power of Congress and violates Article 1, Section 8, and the Tenth Amendment of the US Constitution, and is hereby declared unconstitutional and void. US is permanently enjoined and restrained from enforcing said provision against the Pltf, Sheriff Jay Printz, or any other chief law enforcement officer. cc: CCL, Judges (6), Haynes, Halbrook, Gallinger, Linder, Mazurek, Goetz, Hanigan,

Cert Copy of Clerk Msla. J/O Bk. Vol. 48, pg. 3499. (gar) [Entry date 5/17/94] [Edit date 05/26/94]

5/24/94 35 MOTION by defendant USA to alter judgment (dmz)

* * *

5/31/94 38 RESPONSE by plaintiff to motion to alter judgment [35-1] (dmz) [Entry date 06/09/94]

* * *

11/1/94 44 ORDER by Judge Charles C. Lovell denying motion to alter judgment [35-1] (cc: all counsel, CCL, TC) (dmz)

* * *

11/18/94 45 MOTION by defendant USA for relief from Crt's Order of 11/1/94, or in alternative for stay pending appeal (gar) [Entry date 11/28/94]

* * *

11/23/94 47 RESPONSE by plaintiff Jay Printz to motion for relief from Crt's Order of 11/1/94 [45-1], to motion for stay pending appeal [45-2] (dmz) [Entry date 12/01/94]

* * *

12/2/94 49 NOTICE OF APPEAL by plaintiff Jay Printz from Dist. Court decision [34-2] judgment, [33-1] opinion and order, and [44-1] order entered on 11/1/94, to extent that such judgment and orders did not declare 18 U.S.C. 922(s) unconstitutional and void in its entirety and did not injoin its enforcement. w/c/s (gar) [Entry date 12/06/94]

* * *

12/16/94 51 ORDER by Judge Charles C. Lovell granting deft's motion for relief from Crt's Order of 11/1/94 [45-1] to the extent the 2nd paragraph of the 5/16/94 jgmt is modified to read as follows: "The United States of America is permanently enjoined and restrained from enforcing said provision against any chief law enforcement officer in the District of Montana", denying deft's motion for stay pending appeal [45-2]. @ J/O Vol. 48, pg. 3499. (cc: all counsel; cert cpy snt to USCA) (dmz) [Edit date 12/20/94]

* * *

12/30/94 55 NOTICE OF APPEAL by defendant USA from Dist. Court decisions [33], [34], [44] & [51-1] Fee Status: USA exempt. (cc: all counsel) (mgs) [Entry date 01/05/95]

2. U.S. Court of Appeals for the Ninth Circuit, relevant docket entries

GENERAL DOCKET FOR
Ninth Circuit Court of Appeals

Court of Appeals Docket # 94-36193 Filed: 12/13/94
Nsuit: 2890 Other stutory actions (USdf)
Printz v. USA
Appeal from: District of Montana (Missoula)
* * *
JAY PRINTZ, Sheriff/Coroner, Ravalli County, Montana
Plaintiff - Appellant

v.

UNITED STATES OF AMERICA
Defendant - Appellee
* * *

12/13/94 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.
* * *

7/11/95 ARGUED AND SUBMITTED TO Herbert Y. CHOY, William C. CANBY, Ferdinand F. FERNANDEZ [94-36193, 94-16940, 94-17002, 95-35037]
* * *

9/8/95 FILED OPINION: 94-16940 REVERSED; 94-17002 AFFIRMED in part and DISMISSED IN PART; 94-36193 AFFIRMED in part and DISMISSED in part; 95-35037 REVERSED. (Terminated on the Merits after Oral Hearing; Reversed 94-16940; AFFIRMED in part and DISMISSED in part 94-17002; AFFIRMED in part and DISMISSED in part 94-36193; REVISED 95-35037. Written, Signed, Published. Herbert Y. CHOY; William C. CANBY,

author; Ferdinand F. FERNANDEZ, dissenting.) FILED AND ENTERED JUDGMENT. * * *

10/20/95 Filed original and 40 copies Appellant/cross appellee Jay Printz petition for rehearing with suggestion for rehearing en banc 15 p.pages, served on 10/19/95 [94-36193, 95-35037 (PANEL AND ALL ACTIVE JUDGES (ft) [94-36193 95-35037]

12/19/95 Filed order (Herbert Y. CHOY, William C. CANBY, Ferdinand F. FERNANDEZ,): The petitions for rehearing are denied and the suggestions for rehearing en banc are rejected. [2883194-1 [94-16940, 94-17002, 94-36193, 95-35037] (em)

12/27/95 MANDATE ISSUED [94-36193, 95-35037] (ah) * * *

GENERAL DOCKET FOR
Ninth Circuit Court of Appeals
Court of Appeals Docket #: 95-35037 Filed: 1/13/95
Nsuit: 2890 Other stutory actions (USdf)
Printz v. USA
Appeal from: District of Montana (Missoula)
* * *
JAY PRINTZ, Sheriff/Coroner, Ravalli County, Montana
Plaintiff - Appellee

v.

UNITED STATES OF AMERICA
Defendant - Appellant
* * *

1/13/95 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.

[Note: All other pertinent entries identical to No. 94-36193.]

3. U.S. District Court for the District of Montana, Affidavit and Declaration of Plaintiff Jay Printz, Sheriff/Coroner, filed as Exhibit 2 to memorandum in support of motion for preliminary injunction, March 4, 1994

(Title omitted in printing.)

AFFIDAVIT AND DECLARATION OF PLAINTIFF JAY PRINTZ, SHERIFF/CORONER

Plaintiff, Sheriff/Coroner Jay Printz, being duly deposed, declares and states:

1. My name is Jay Printz. I am sheriff/coroner of and reside in Ravalli County, Montana, having been duly elected by the citizens of that county in 1986 and since re-elected.

2. The office of sheriff is authorized by Article XI § 3 of the Constitution of Montana; its duties are fixed by §7-32-2121 M.C.A.; its budget allocations are fixed by the County Board of Commissioners.

3. The office of coroner is authorized by Article XI, § 3 of the Constitution of Montana; its duties are fixed by §7-4-2911 M.C.A.; its budget allocations are fixed by the County Board of Commissioners.

4. I am, for purposes of 18 U.S.C. §922(s), the "chief law enforcement officer" of Ravalli County. Under that statute, I would accordingly be required to make "reasonable" investigation of "available" records to determine if any

person purchasing a handgun from a licensed dealer is precluded from receiving or possessing that arm. There are to my knowledge 169 licensed firearm dealers in Ravalli County.

5. I can briefly state what records are relevant to determining whether a person can possess firearms under State and Federal law. Whether all these are "available", and whether a failure to examine them would be "reasonable" or "unreasonable" within the meaning of the law I cannot guess. The relevant records would include:

NCIC: These records are electronically retrievable at my office. For the most part, however, they only reflect outstanding warrants.

CJIN: These records are also retrievable. They do include records of convictions, but only from Montana courts. Many residents of Ravalli County have moved here from out of state. Ravalli County is the fastest growing county in the State of Montana. Further the information required to be submitted under 18 U.S.C. §922(s) does not include two of the most important data needed for an accurate search of this system -- the social security number and place of birth. Finally, these records would not reflect whether the person has received a restoration of civil rights following conviction. Under Montana law, civil rights are automatically restored following certain convictions, and in other cases such restoration may be granted by the

court.

Relief From Disabilities:

The Federal law also excludes from its prohibitions persons who have received a "relief from disabilities" from the Treasury Department. I am not sure how this could be determined, but expect it would require long-distance calls to Treasury headquarters in Washington, D.C..

County Court Criminal Records:

These could be handsearched to determine the nature of the offense and whether a non-automatic restoration of civil rights had been granted. The records for Ravalli County could be researched in Hamilton; should the records be found in another county access would require somewhere between one and six hours' driving time each way.

State Hospital Records:

The records of the State Hospital, in Warm Springs, Montana, would be the only state-wide record of person who have been committed to institutions and are thus forbidden to possess firearms under Federal law. Accessing these would require three hour's driving time one way, six hours round

trip. I anticipate the Hospital would refuse to permit examination in any event.

County Court Civil Records:

Federal law also prohibits ownership by anyone ever adjudicated a "mental defective", and State law prohibits possession by a person found a danger to himself or to others. To determine if these findings have been made would require examination of county court civil files. As with the county criminal files, this might require anywhere from a few minutes to six hours' driving time in addition to looking up the person's name and, if they are shown, obtaining and examining the civil files.

Veteran's Hospital, Fort Harrison:

Military veterans utilize the psychological, alcohol and drug treatment services provided by the Veteran's Hospital at Fort Harrison, Montana. Accessing these records would require three hours driving time one way, six hours round trip. From my past experience as Ravalli County Sheriff, I am aware Fort Harrison will release no information to my office without proper authorization.

Military Service Records.

Federal law prohibits ownership by any person given a dishonorable discharge. I have no idea as to how or of whom I could inquire to determine whether a resident of Ravalli County had received such a discharge.

Illegal Alien Status:

Federal law prohibits ownership by aliens unlawfully in the United States. Again, I have no idea as to how I could make "reasonable" investigation into this possibility.

Drug Use:

Federal law prohibits ownership by anyone who is an unlawful user of a controlled substance. "Reasonable" investigation might include access to a wide variety of law enforcement and misdemeanor court records, as well as medical and drug treatment records.

Renunciation of Citizenship:

Federal law precludes firearms ownership by anyone who has renounced their citizenship. Apart from the possibility that the State Department maintains records on this, I have no idea of how to investigate this unlikely possibility.

6. Depending upon what is "reasonable" and what

records are meant to be "available" under the terms of the law, a background check might require anywhere from a man-hour to several man-days. With 169 licensed firearm dealers in Ravalli County, I may receive several requests per day involving intra-county firearms transfers. In addition, Ravalli County residents are known to regularly involve themselves in firearm transfers which originate in the other 55 counties in Montana. Since the "residence of the transferee" in these instances is Ravalli County, under 18 U.S.C. §922(s)(1)(A)(IV) requires I perform the background check. Under 18 U.S.C. §922(s), I am subject to a five-day deadline on each.

7. I have in my office one undersheriff, four detectives, a lieutenant, a patrol sergeant, and seven deputies for active patrol and investigation. This is the same number of Sheriff's officers I have had available for patrol and investigation functions since 1982. These officers must provide 24 hour law enforcement for 2400 square miles under my jurisdiction, occupied by approximately 30,000 residents. We also have an active, transient tourist population in Ravalli County. By my calculation, we average 2 deputies on patrol at any given moment, for this entire area and population. Between the necessity of responding to actual calls and follow up investigations, these officers are hard put to provide routine patrol and investigation. If I am now compelled to perform background checks of our residents, it will have to be done by pulling deputies off patrol and investigation duties. For a large department, removing one deputy from patrol may not be a burden. For the approximately 30,000 residents of Ravalli County, the loss of one officer means a 7% reduction in law enforcement

protection.

8. It is necessary to point out that a Montana county is very much a subordinate of the State, with narrowly limited powers. Under Montana law a county official is personally liable if he expends county funds without being able to "point to" a provision of State statute authorizing the expenditure. The duties assigned to me by 18 U.S.C. §922(s) have never been accomplished by our sheriffs. We have no mechanism for carrying them, or anything resembling them, out. I have no provision in a budget authorizing the required expenditures. To the extent I do not carry out 18 U.S.C. §922(s), I am personally liable to a criminal prosecution. To the extent I do carry out 18 U.S.C. §922(s), I may be personally and civilly liable. Both these liabilities will arise on February 28, 1994, and continue whether I am in or out of office.

9. I have another concern that the requirements of 18 U.S.C. §922(s) places me in direct violation of § 45-8-351 M.C.A. which, I note, lists a cross-reference to § 1-1-224 M.C.A., and reads:

> **Restriction on local government regulation of firearms.** (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun,

handgun or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

10. In summary, if preliminary relief is not granted I will be harmed by being forced to speculate at my risk what 18 U.S.C. §922(s) means by a "reasonable" inquiry and "available" records; by being required to perform uncompensated and involuntary labor myself, and by exposure to a dilemma of personal civil or criminal liability. The citizens of Ravalli County will be harmed by a significant reduction in patrol strength and the availability of law enforcement personnel for crime prevention, investigation, and response. None of these harms can be compensated, and all are irreparable once incurred.

I, Sheriff/Coroner Jay Printz, declare under penalty of perjury that the above is true and correct.

Dated this ___ day of March, 1994.

_____

Sheriff/Coroner Jay Printz

(Notary clause omitted.)

4. U.S. District Court for the District of Montana, Plaintiff's Exhibits introduced at hearing of April 7, 1994:

Exhibit 1

BRADY LAW TRANSACTIONS

ATF FORM 5300.35 (HANDGUN SALES) AS OF 4-6-94 - 101

MONTANA BORN	- 18
COUNTY DEALER	- 63
TOTAL	- 101
BORN OUT OF STATE	- 83
OUT OF COUNTY DEALER	- 38
TOTAL	- 101

==========

ATF FORM 3310.4 (MULTIPLE PISTOL SALES - 2 OR MORE) AS OF 4-6-94 - 1

Exhibit 2

RAVALLI COUNTY SHERIFF'S DEPARTMENT
YEARLY REPORT TO COUNTY COMMISSIONERS

1992

GENTLEMEN:

THE FOLLOWING YEAR END REPORT IS HEREBY SUBMITTED FOR YOUR EVALUATION.

I AM RELUCTANT TO BEGIN THIS REPORT ON A NEGATIVE NOTE, HOWEVER IN VIEW OF THE SERIOUS DEFICIENCIES IN MANPOWER AND FUNDING, IT IS GETTING INCREASINGLY MORE DIFFICULT TO FIND AREAS OF A POSITIVE NATURE.

I WILL AGAIN POINT OUT, AS HAS BEEN DONE FOR SEVERAL YEARS, THE MANPOWER PROBLEM. THIS COUNTY CONTINUES TO GROW AT AN ALARMING RATE, YET I HAVE THE SAME NUMBERS OF SWORN OFFICERS AND DISPATCHERS THAT WE HAD IN 1982! SOMETHING IS SERIOUSLY WRONG, GENTLEMEN, AND THE EFFECTS OF THIS PROBLEM CONTINUE TO ACCUMULATE IN MANY AREAS SUCH AS MORALE, PRODUCTIVITY, TURNOVER AND IN MY VIEW PUBLIC SAFETY. ACCORDING TO THE BOARD OF CRIME CONTROL'S 1992 STATISTICS, RAVALLI COUNTY IS SECOND TO LAST IN THE STATE IN THE OFFICER POPULATION RATIO. RAVALLI COUNTY HAS 0.71 OFFICERS PER

THOUSAND POPULATION WHILE THE STATE AVERAGE IS **1.4** OFFICERS PER THOUSAND! **THE NATIONAL AVERAGE IS 2.2 PER THOUSAND**. THE CITY OF HAMILTON IS LISTED AS HAVING 3.25 OFFICERS PER THOUSAND. ONLY THE GLACIER COUNTY SHERIFF'S DEPT. HAS A LOWER RATIO, AT 0.65 PER THOUSAND. IN MY OPINION THIS RATIO IS DANGEROUS, NOT ONLY IN TERMS OF OFFICER SAFETY, BUT PUBLIC SAFETY AS WELL.
CONSIDERING THE FACT THAT THIS IS THE SECOND FASTEST GROWING COUNTY IN THE STATE AND WE ARE EIGHTH IN POPULATION, SOMETHING IS TERRIBLY WRONG!

AS CAN BE SEEN BY THE STATISTICS, WE ARE GOING UP IN THE NUMBERS OF SERIOUS CRIME, WHICH TAKE MORE TIME TO RESOLVE, AND DOWN IN EFFICIENCY OVERALL. THIS TREND WILL NO DOUBT CONTINUE CONSIDERING THE LACK OF COMMITMENT TO PUBLIC SAFETY RESOURCES.

ON A PARTIALLY POSITIVE NOTE, THE VOTERS PASSED THE JAIL BOND IN 1992 AND THAT SHOULD ALLEVIATE SOME OF THE JAIL LIABILITIES AND CONCERNS AS THEY RELATE TO THE PHYSICAL FACILITY, SUCH AS OVERCROWDING, HOWEVER, THE DOWNSIDE IS WE ARE EXPECTED TO OPERATE THE NEW FACILITY WITH THE SAME STAFFING LEVELS THAT WE CURRENTLY HAVE. THIS CREATES MANY PROBLEMS IN THAT, AS IS THE CASE NOW, WE SIMPLY DON'T HAVE ADEQUATE DISPATCHERS AND JAILERS TO HANDLE THE

WORKLOAD.

AT THIS POINT, THE FUTURE CERTAINLY DOESN'T LOOK TOO BRIGHT CONSIDERING THE VARIOUS PROPOSALS AT THE LEGISLATURE, HOWEVER UNTIL THE SESSION IS OVER WE WON'T KNOW THE FULL IMPACT. IT IS ALMOST A CERTAINTY THAT THE STATE WILL ENDEAVOR TO DROP EVERYTHING IT CAN ONTO LOCAL GOVERNMENT AND THIS WILL ONLY SERVE TO DEBILITATE OUR LEVEL OF SERVICE TO THE LOCAL PUBLIC.

AT THIS POINT, WE CAN ONLY DO OUR BEST WITH WHAT WE HAVE AND HOPE THAT TRAGEDY DOESN'T JUMP UP AND BITE US.

RESPECTFULLY SUBMITTED.

JAY PRINTZ, SHERIFF/CORONER

Exhibit 3

RAVALLI COUNTY SHERIFF'S OFFICE
ANNUAL REPORT

1993

GENTLEMEN:

THE FOLLOWING YEAR END REPORT IS HEREBY SUBMITTED FOR YOUR EVALUATION.

ANOTHER YEAR HAS PASSED AND WE CONTINUE TO LOSE GROUND IN OUR EFFORTS TO PROVIDE EFFECTIVE LAW ENFORCEMENT SERVICES TO AN EVER INCREASING AND DIVERSE POPULATION IN RAVALLI COUNTY.

THE FACT THAT THIS REPORT IS LATE, IS EVIDENCE THAT THE DAY TO DAY DEMANDS FORCE ME TO PUT OFF LOW PRIORITY PROJECTS.

WE ARE INCREASINGLY BEING ASKED, AND SOMETIMES ORDERED, TO DO MORE WITH LESS AS EVIDENCED BY THE "BRADY LAW". WE HAVE MADE EFFORTS TO ACCOMPLISH OUR MISSION THROUGH THE USE OF ALTERNATIVES TO COUNTY FUNDING, SUCH AS THE HUGE CONTRIBUTION OF THE VOLUNTEER RESERVE OFFICERS, THE DARE PROGRAM, THE COOPERATIVE AGREEMENT PROGRAM WITH THE U.S. MARSHAL'S OFFICE, THE COOPERATIVE AGREEMENT WITH THE U.S. FOREST

SERVICE, OUR K-9 TEAM, AND OTHER PROGRAMS. WE ARE, HOWEVER, UTILIZING OUR PATROL VEHICLES LONG PAST THEIR SAFE LIMITS, THE DARE PROGRAM GRANT IS RUNNING OUT AND WE ARE BURNING OUT OUR EMPLOYEES AND VOLUNTEERS AS SURELY AS A CANDLE IN THE WIND.

AS HAS BEEN POINTED OUT IN LAST YEAR'S REPORT AND IN NUMEROUS PREVIOUS YEARS, WE SEEM TO LOSE GROUND EACH YEAR DUE TO AN APPARENT LACK OF ABILITY OR DESIRE TO FUND THIS OFFICE AT MINIMUM ACCEPTABLE LEVELS. IN MY ESTIMATION, WE HAVE SUCCEEDED IN PLACING THIS OFFICE ON A MANPOWER AND RESOURCE DEFICIT THAT WILL BE IMPOSSIBLE TO RECOVER FROM.

WHEN I CAME TO WORK HERE IN 1972, THIS OFFICE EMPLOYED 4 SWORN OFFICERS. BY 1980 THAT NUMBER INCREASED TO 13 SWORN OFFICERS, AND IN 1981 TO 14 SWORN OFFICERS. FOR SOME UNKNOWN REASON, THE COUNTY DECIDED, AT THIS AND FUTURE YEARS, TO STRANGLE THE SHERIFF'S OFFICE BY FAILING TO COMMIT ADEQUATE FUNDING FOR MINIMUM STAFFING LEVELS. FROM 1981 TO THE PRESENT, WE HAVE INCREASED THE SWORN OFFICER RANKS FROM 14 TO 15 (DOES NOT INCLUDE THE DARE OFFICER FOR OBVIOUS REASONS). IT SIMPLY AMAZES ME THAT ANY REASONABLY INTELLIGENT PERSON CAN JUSTIFY ONLY A ONE OFFICER INCREASE IN THOSE TWELVE YEARS. IN

CONSIDERATION OF THE COUNTIES GROWTH AND IN CONSIDERATION OF THE FACT WE WERE UNDERMANNED IN 1980! THE AVERAGE OFFICER PER 1,000 RATIO IN MONTANA IS 1.4. IF YOU CONSIDER THE ESTIMATED POPULATION OF THIS COUNTY AT APPROXIMATELY 28,000 PLUS IN 1993, IT IS PRETTY OBVIOUS THAT WE HAVE BEEN MANAGING TO LEAP BACKWARDS.

THIS PAUCITY OF MANPOWER/RESOURCES EXTENDS TO VIRTUALLY EVERY AREA OF MY OFFICE AND PLACES THE COUNTY IN A HUGE LIABILITY POSITION. DO WE NEED A TRAGEDY BEFORE WE ACT? I HOPE NOT, AND I URGE THE READERS OF THIS REPORT TO CONSIDER THE ENORMOUS, PUBLIC SAFETY CONCERNS THAT PLAGUE ME DAILY.

I WILL NOT DWELL ON THE JAIL AND DISPATCH ISSUES IN THIS COVER LETTER BECAUSE I "BOMBARD" YOU CONSTANTLY WITH THESE AND OTHER DEFICIENCIES AND THEY NEED NOT BE REVISITED HERE. SUFFICE IT TO SAY THAT THESE PROBLEMS WILL NOT GO AWAY, AND I WILL CONTINUE TO PRESS FOR ADEQUATE FUNDING FOR ALL AREAS OF MY OFFICE.

RESPECTFULLY SUBMITTED.

JAY PRINTZ, SHERIFF/CORONER5. *U.S. District Court*

U.S. District Court for the District of Montana, Transcript of Proceedings of April 7, 1994

[Direct examination of Sheriff/Coroner Printz by plaintiff's counsel Haynes:]

[16]

Do you recognize these exhibits?

A Yes, sir. I wrote them.

Q And what are they?

A They're basically the cover letters that I placed on my yearly report to the commissioners on the sheriff's department's activities.

Q Even before Brady was enacted, 1992, what were you telling the Ravalli County commissioners about the constrictions on the manpower, the available funding you have within your sheriff's/coroner department?

A Well, to paraphrase what I've written here, one of my primary considerations and problems and frustrations in my department is the lack of manpower. And I go on to quote from the Board of Crime Control's statistics on officer ratios in the State of Montana in which Ravalli County Sheriff's Office has point-seven-one officers per thousand population; and the state average is 1.4 and the national average is 2.2.

That point-seven-one puts me out of 56 counties No. 55. I'm second to last in officers per thousand ratio. And we're the eighth most populous county. And this year we have been designated the fastest-growing county in the State of Montana.

And my manpower is seriously limited to where I can hardly -- in fact, in a lot of cases, I don't feel I'm even

[17]

capable of performing my day-to-day functions. I'm getting more and more behind.

In fact, in my nine -- I won't go to the '93, but I'm concerned as indicated in my cover letter there about public safety, and I have been even prior to '92. These have been referred to as the sheriff's lamentations and complaints about my inability to perform my functions, at least to the degree that I feel comfortable and that I feel that I took this office to perform.

And quite honestly, Your Honor, it makes me feel as if I am not carrying out the sworn duties that I've promised the people that have elected me to carry out.

Q So in Plaintiff's Exhibit 3 for identification you refer to the Brady Law in there, and you are warning the county commissioners that there may be some additional impacts on you.

In response to that warning, did the commissioners provide you with additional funding for 1993 for your other state-imposed duties?

A. No. If I could expand a little bit.

Of course, every year I go in asking for more manpower, and this has been, I think, a constant thing even back when I was a deputy and the prior sheriff. I note here that I say we are increasingly being asked and sometimes ordered to do more with less as evidenced by the Brady Law, but that

[18]

also carries with it other things that I end up being unable to

control, such as we have mental health commitments that I'm responsible for transportation, and budgetarily, I have to pay for these things. So when a person has a mental health problem and an involuntary commit is ordered, I end up without any regard for my manpower situation, being ordered by the various courts to take this person into custody and transport him to the mental health or the various mental institutions around. Then that money comes out of my budget, the costs of keeping them, treating them, and transporting them, etcetera.

Or any one of the courts, either the district court or the lower courts, will order me to make transportations here and there. That's one of my responsibilities. Extraditions pop up certainly at unplanned times where a person gets arrested out of state. I'm the responsible person to make the extradition. That's a manpower that I have no control over.

Other areas of my budget that are uncontrollable are prisoner medical expenses. I have an inmate in the jail, he has a heart problem while he's incarcerated, and I have to do a heart transplant, that will come out of my budget, which seriously affects my fiscal resources.

Q Sheriff, if I could ask you how is Brady or the duties that are being imposed on you by Brady going to crowd those

[19]

other state-mandated duties you perform?

MR. SITCOV: I'm going to object, Your Honor, to the leading nature of that and a great number of the questions that are being asked. Since this is his witness, he ought not to be leading him.

THE COURT: Overruled. You may answer, Sheriff.

A Would you restate that please.

Q (BY MR. HAYNES) I asked you how Brady and the duties imposed by the Brady Act upon you as the chief law enforcement officer in Ravalli County is going to crowd, in your opinion, the other state duties that are imposed upon you?

A Well, the way I see it, when you have duties imposed, then in my position, I must set priorities. If these things get done, something has to not get done. And I'm constantly doing that now.

There are many state-mandated functions that I don't do. It's not necessarily because I don't want to do those, but such as traffic and D-U-I control, I just simply lack the ability to do it. So I don't do some of those things unless I'm absolutely forced, such as we get a complaint of a reckless driver where you're forced to respond to an immediate danger. But as far as doing it on a routine basis, it doesn't get done, strictly because my priorities and manpower allotment doesn't allow it.

[20]

So if I have to do something, and under Brady when it came out was evidenced to me that this said if you don't do it, you're subject to a federal criminal penalty, I'm going to have to give up something here. And frankly, I don't have much I can give up.

Q. If you give up something in the area of your state-imposed duties, who is going to feel the impact of that?

A Obviously, the citizens of the county.

Q Why do you say that?

A They're the ones that -- who I'm obligated to provide these services to. If I don't provide the service to them, then they're the ones that suffer.

Q What kind of impact or suffering is going to occur? Can you give any specifics?

A Well, there's obviously a lot of impacts. Just depends. There's many a time when I have one officer out in the entire county of twenty-four hundred square miles when you flow in vacation, sick leave, and all these other personnel matters, extraditions, transportations. If I pull somebody off somewhere, then I may not have somebody in any sort of a near proximity to respond to whatever, might be a domestic abuse in progress, or any number of serious things.

* * *

[23]

fiscal officer, the finance officer, a few days ago and said that your juvenile detention budget is almost spent.

And my basic response is I really can't control it. When juveniles need to be detained, they need to be detained. I can't control it, because of the court's responsibility in determining detention, whether or not they will be detained. So I spend the money out of my budget.

Then when that portion of my budget's exceeded, somewhere in my budget money has to be moved around to cover that excess which then shorts me over here.

And I'm also in an overtime crisis, where I think basically, and I can't quote you exactly, but my manpower budget is almost exceeded now. And I still have to go to the first of July. And frankly, I don't know how I'm going to get

through that crisis. Probably going to have to approach the commissioners and say I'm out of money. What can I do? I cannot shut my office down as some people can.

Q So how do you look at the duties imposed on you by the Brady Act in terms of impacting the fixed budgetary amount you've been given, and as I understand you testimony, you're two-thirds of the way through for this fiscal year?

A Well, obviously there was no consideration for the budget year that I'm in for any extra duties, and therefore, it's unplanned for, and if I was to do it to my standard, professional standard of a reasonable effort, it's going to

[24]

cost in time, manpower, and resources, none of which I have.

THE COURT: Anything further, Mr. Haynes?

MR. HAYNES: No, Your Honor.

I'd move for the admission of Plaintiff's Exhibit 1, 2, and 3.

THE COURT: Any objection, Mr. Sitcov?

MR. SITCOV: No.

THE COURT: Very well. Without objection, Exhibit 1, 2, and 3 are admitted.

The United States may cross-examine.

MR. SITCOV: Thank you, Your Honor.

Your Honor, I was not expecting that there would be testimony elicited, so it may take me a moment to get documents before the witness. And I hope you'll indulge me that inconvenience.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. SITCOV:

Q You just testified that you had -- you were concerned about whether or not you had enough money to continue operating through the fiscal year, is that it?

A That's correct.

Q And you would have those concerns with or without the Brady Act; isn't that right?

[25]

A I have them all the time, yes.

Q So it's not the Brady Act that's causing you to have these concerns?

A Well, it's another impact that I have to worry about.

Q It's not the only impact?

A Certainly not the only one, no.

Q Okay.

Now, I think you said that some of your duties are transporting prisoners; is that right?

A That's correct.

Q Okay.

And you have a small force; is that it?

A That's correct.

Q Exactly how large is your force?

A Total manpower including the DARE officer that I referenced earlier is 16, and that counts myself, sworn officers in my department.

Q Are you required by law to dedicate someone to the DARE Program?

A No.

Q Okay.

So that's an officer --

A However, let me explain. We receive a grant from the Board of Crime Control which requires some matching money. My DARE Program has gone out and actively sought

[26]

contributions.
And the money and the grant allows me to put another officer on the street in his place. And when the program goes out and it's not financed by the county, if it's not financed, I lose that DARE officer, and then I'm back down to my 15 officer.

Right now I have 16 with DARE. If DARE goes down the tubes, I got 15 officers.

Q Okay.

And let's say that all -- You still had your DARE officer, so you've got 15 officers. And they're all -- they're all engaged in investigation murders, robberies, car thefts, drug deals, that sort of thing. And an emergency request comes in that you've got to transport a prisoner someplace, what do you do?

A Well, you know, it's just a matter of trying to move your manpower around. You may have to use somebody on overtime, of which I just explained is a serious problem right now.

On occasion, I will use volunteer reserve officers of which -- and I don't have the yearly reports, I've got 8,000 hours of volunteer time from those people of which I'm seriously concerned about burning out their good graces and what they do for me.

And then there are just manpower swapping around so that I have people able on the shifts to respond to calls.

[27]

Notwithstanding their investigatory functions, their case load that certainly doesn't get followed up to my expectations.

Q Have you ever been in a position where you've had to choose between sending one of your deputies on one duty as opposed to another because you just don't have enough?

A I'm faced with that almost daily. And there's many a time I'm responding to a call that is more properly a deputy's job, but I end up to go out to handle a call because of the immediacy of it and the lack of somebody else to handle it.

Q Now, I take it from your testimony that you have an N-C-I-C computer set up in your office?

A That's correct.

Q Can you explain to the court what the N-C-I-C system is?

A That's the National Crime Information Center that is operated, I believe, by the F-B-I. They have control -- operational control of the system.

And it's basically a teletype or electronic computer access to the national system. And also the state system C-J-I-N, Criminal Justice Information Network, in Montana.

Q What kind of information does it give you?

A Criminal history through N-C-I-C, you get criminal history information. Through CJIN, we obviously get vehicle

[28]

registration, driver's license, stolen and wanted persons type

information. The whole gamut.

Q How long have you had the N-C-I-C system at your -- in your office?

A As long as I can remember. Probably since 1972, teletypes were in place then.

Q And so checking criminal histories is a kind of thing that even without regard to the Brady Act, you've done for some period to time?

A That's true.

Q Do you have before you the affidavit you filed in this case?

A I don't have it before me, no.

MR. SITCOV: Steve, do you have a copy that you could give him?

Otherwise, Your Honor, I'll have to approach the witness and question him at the witness stand.

MR. HALBROOK: We'll get one. Just hold it a second

Q (BY MR. SITCOV) Sheriff, will you turn to page 6 in your affidavit. You'll see that starting on line 12 on page 6 is paragraph No. 8. The first sentence of paragraph 8 says, I'm quoting: "It is necessary to point out that a Montana county is very much subordinate of the state with narrowly limited powers."

* * *

[Redirect examination by plaintiff's counsel:]

[34]

N-C-I-C wouldn't receive that record until we've managed to put all the stuff together and then send it to the record

keeping places.

So when I hit N-C-I-C up for record information, it doesn't tell me that this person has been indicted or maybe he was convicted last week and the records have never made it to N-C-I-C.

And so it's totally inadequate, and in order for me to do what I feel professionally is a reasonable effort, and I try to be a reasonable person, I think that requires me to check these things out more thoroughly than to just look at the name, do a quick N-C-I-C which I feel is seriously lacking, and then say he's good to go. And then have that person go out and commit some crime and then people come back to me and say you said he was good to go, and he went out and did these terrible things. Now, how are you going to explain that, Sheriff? And in good conscience, I couldn't.

Q Sheriff Printz, referring to page 10 of the A-T-F report, Exhibit 1 about which you were asked a question, the open letter, the A-T-F opines that in densely-populated, urban areas, every potential gun buyer might be run through the available computer and that many would be personally known to you.

Based on Exhibit 1, which is the number of transactions

[35]

that you've experienced, actually experienced in Ravalli County since February 28th, 1994, what's your response to actually personally knowing most of these gun buyers?

A In 1972, I probably would know when you told me a person's name whether or not he was somebody to be careful of. Whether or not he was a person going to cause you a

problem. But in this day, I couldn't tell you. Probably 80 percent of the people around there are no longer people that I personally know. I couldn't tell you whether or not in most cases that that person is going to be a problem.

Q And the last question, Sheriff Printz, there was some questions directed to you by Mr. Sitcov about you having to prioritize your duties even before the Brady Act became effective.

But since it's been effective, are there any duties or any investigations or any functions that you've had to even put lower on the priority scale which you consider otherwise should be receiving some current attention, ongoing investigations or otherwise?

A Well, virtually there's a whole lot of things that I have some serious problems as far as what I'm actually accomplishing. And I have a current open homicide case that caused me great distress because of the lack of my lead investigating officer, this is a 1989 homicide, that he's also my drug officer, he's also investigates burglaries and

responds to all these dog calls because of the lack of other deputies.

And so as this case has kind of reached a plateau, the tendency is, I'm not accomplishing as much as I want here, but these immediate things are barking up my shins, and I got to get out and do theses. He's got these other calls to work, drug investigations to try and work; so I don't think personally that I'm giving that open homicide the effort for resolution that I personally feel that we need to be doing. But it's reached a plateau, and so it kind of gets farther down

the old back burner. And it's cause of concern for me. I don't want to retire from this office saying I left a homicide open. * * *

6. U.S. District Court for the District of Montana, Exhibit 5 to Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction: Bureau of Justice Assistance Fact Sheet, Fiscal Year 1993 Review of State Formula Grant Strategies (excluding Exhibits)

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Bureau of Justice Assistance
Fact Sheet

Fiscal Year 1993 Review of
State Formula Grant Strategies

BUREAU OF JUSTICE ASSISTANCE
REVIEW HIGHLIGHTS:

- **All States will comply with local passthrough requirement, with 41 (82 percent) of the States providing more to local units of government than required by statute.**

- **States have allocated $42,374,216 more to local units of government than required by statute ($259,554,083 allocated versus $217,179,867 required).**

- **Locally implemented projects will receive 65 percent of the formula program funding.**

- **Thirty-one States (55.35 percent) are using 5 percent or less of their funds for administration.**

- **A total of $26,252,114 has been designated as set-aside for criminal justice records improvement programs.**

Introduction

The Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program, authorized by the Anti-Drug Abuse Act of 1988, is administered by the Bureau of Justice Assistance (BJA), Office of Justice Programs (OJP), Department of Justice. This program is designed to assist State and local units of government in carrying out specific programs that offer a high probability of improving the functioning of the criminal justice system. Special emphasis is placed on assisting nationwide and multijurisdictional projects in controlling the drug and violent crime problem, as well as those efforts that are advocated in the National Drug Control Strategy.

In accordance with Sec. 501(b) of the Act. States may award formula grant funds to State agencies and units of local government to enforce State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 *et esq.*) and improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. Grants may provide personnel, equipment, training, technical assistance, and information systems for more widespread apprehension,

prosecution, adjudication and detention, rehabilitation of persons who violate such laws and for providing assistance (other than compensation) to the victims of such crimes.

Section 506(a) of the Act requires that at least 80 percent of the total appropriation be allocated for the formula grant program. The appropriation for fiscal year 1993 remained at $473,000,000. After reserving $50,000,000 for discretionary programs, a balance of $423,000,000, representing 89.42 percent of the total appropriation, remained for the formula grant program. This amount is divided among the 50 States, five Territories, and the District of Columbia. Each entity receives a base amount of 0.25 percent of the total formula allocation or $500,000, which ever is greater (the base amount for fiscal year 1993 was $1,057,500). The remaining funds are allocated on the basis of each State's relative share of the Nation's total population. Although the average allocation was $7,553,571, actual funding ranged from a high of $44,349,000 for California to a low of $1,203,00 for the Virgin Islands. American Samoa and the Northern Mariana Islands are considered as a single unit for funding purposes and receive a total allocation of $1,186,000 (America Samoa -- $794,620; Northern Mariana Islands -- $391,380).

Application Submission and Review Process

The Anti-Drug Abuse Act of 1988 established specific timeframes by which formula grant funds must be awarded. Within 60 days after the enactment of BJA's annual appropriation, the States are required to submit an application and comprehensive statewide strategy to the BJA. The fiscal

year 1993 funding cycle established December 7, 1992, as the deadline for the States' application submission. The legislation also mandates that BJA conduct a full review and approve or deny the application within 45 days of receipt of a State's complete submission. These reviews require multi-level coordination among the offices within OJP to ascertain the State's compliance with regulations and legislative mandates in addition to an indepth assessment of data and compilation of the strategy's information into a summary format (exhibit 1).

Key Findings

- Population fluctuations continue to alter States' allocation.

State population figures, based on the Bureau of Census estimates as of July 1, 1991, revealed significant fluctuations in population, thus altering each State's relative share of the Nation's total population. Because population share is the primary determinant for funding allocations, fifty-five of the entities experienced some variance in funding level for fiscal year 1993. Twenty of the States (35.71 percent) received an increase in funding, which ranged from $7,000 for Delaware to $301,000 for California. Conversely, 35 States (62.50 percent) experienced a decline in funding, with New York encountering the greatest decrease at $256,000. Only Wyoming's funding remained static at $1,713,000 for both fiscal year 1992 and fiscal year 1993 (exhibit 2).

- Administrative funding allocations have increased.

Each State or Territory may use up to 10 percent of its allocation for the administration of the grant program. BJA encourages States to use the necessary resources, within the 10 percent, for proper program administration. Analysis indicates a slight increase in the amount of money being used for administration (5.95 percent for fiscal year 1993 versus 5.61 percent for fiscal year 1992).

Thirty-one States (55.35 percent) will use 5 percent or less of their funds for administrative purposes: however, 25 States (44.64 percent) anticipate using up to 10 percent of their allocation for administration. It should be noted that the primary reason for using administrative funds in excess of 5 percent was to support enhanced evaluation and monitoring efforts (exhibit 3 and 4).

- States continue to exceed passthrough requirements.

The statutory variable passthrough is the amount of program allocated funding that must be made available to local units of government. As administrative funds serve both State and local units of government, and expenditures are generally in the same proportion as those program funds, they are subtracted initially from the award, prior to calculating actual dollar amounts to be passed through.

The minimum passthrough amount for each State is based on the percentage of funds expended for criminal justice purposes by local units of government relative to total State and local criminal justice expenditures in the State. These expenditures must be from a government's "own revenue

source," e.g., taxes, charges and fees, utility revenue, and interest earnings. However, this requirement applies only to the 50 States. The District of Columbia, because of its designation as a local unit of government, is required to pass through 100 percent of its allocation. The five territories of Puerto Rico, and Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands have no passthrough requirement because of their single-level government structure.

Passthrough requirements for the 50 States range from a low of $369,755 (21.97 percent) in Alaska to a high of $4,963,634 (70.29 percent) in Minnesota, with the average being $4,343,597. Although all 50 States will meet the minimal requirement, 41 (82 percent) will surpass their required amount. This is consistent with previous years when States retained less funding for State-level projects and allocated more for projects to local units of government.

Fiscal year 1993 funding required that $217,179,867 be passed through to local jurisdictions, however, the States indicate that they will actually surpass this requirement by $42,374,216, for a total of $259,554,083. These figures indicate that, although States are permitted to retain an average of 45.60 percent of the allocation for the implementation of State-level programs, they are actually using an average of only 35 percent. Thus, nationally, the majority of the funding (65 percent) is being used for the implementation of programs to specifically assist local units of government in their war against drugs and violent crime (exhibit 5).

- Some States will exceed the 5 percent set-aside for criminal justice records improvement.

The Crime Control Act of 1990 amended the Omnibus Crime Control and Safe Streets Act to require each State receiving Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds to allocate at least 5 percent of its total award for the improvement of criminal justice records. This requirement, which applied to the fiscal year 1992 and subsequent formula grant awards, is for improvements that include the following:

- Completion of criminal histories to include the final disposition of all arrests for felony offenses.

- Full automation of all criminal justice histories and fingerprint records.

- Frequency and quality of criminal history reports to the Federal Bureau of Investigation.

An analysis of information supplied by the States indicates that, although 38 States (67.85 percent) will minimally comply by setting aside the required 5 percent, 18 States (32.14 percent) intend to surpass this amount, with South Carolina designating up to 18.92 percent (exhibit 6).

- Funding priorities remain relatively constant.

Consistent with the two prior years, fiscal year 1993

proposed priorities indicate that the greatest portion of the monies, $141,877,392 (33.54 percent), will go toward funding multijurisdictional task force activities.

Further analyses of data gathered through anticipated funding (Attachment A/Program List Workplan) and actual funding (Individual Project Reports) reveal that, since fiscal year 1991, States have constantly dedicated larger portions of their allocations to multijurisdictional task force activities, corrections programs, and programs to improve technology, including criminal justice information systems.